IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 773 of 1986
With
CRIMINAL APPEAL No. 774 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
IKBAL LATIF - Opponent(s)

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Appearance :
MR.KC SHAH, ADDL. UBLIC PROSECUTOR for Appellant(s) : 1,
MS. BANNA DATTA WITH MR AR SHAIKH for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 04/09/2006

ORAL COMMON JUDGMENT :

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

(1) Heard ld. APP Mr. KC Shah for the appellant State in both these appeals and ld. Counsel Ms. Banna Datta with ld. Counsel Mr. AR Shaikh for the respondents (original accused).

(2) Both these appeals are filed by the State of Gujarat under section 378 of the Code of Criminal Procedure against the common judgment and order of acquittal dated 27.03.1986 recorded by the ld. Sessions Judge, Kutch at Bhuj in Sessions Case Nos. 37/1985 and 60/1985. Criminal Appeal No.773/1986 is filed by the State against respondent Nos.1 to 3- the original accused of Sessions Case 37/1985 whereas the Criminal Appeal No. 774/1986 is filed by the State against the respondent No.4 - the original accused of Sessions Case No.60/1985. Initially, the chargesheet against respondent Nos. 1 to 3-accused came to be filed on 12.08.1985 and their case came to be transferred to the Court of Sessions at Bhuj which came to be numbered as Sessions Case No.37/1985.

Subsequently, respondent No.4 -accused came to be arrested and supplementary chargesheet came to be filed against respondent No.4 and his case was also transferred to the Court of Sessions at Bhuj which came to be registered as Sessions Case No.60/1985. Since, both the Sessions Cases arose out of one incident and evidence to be led was also common, the ld. Sessions Judge tried both the Sessions Case together and vide common judgment dated 27.03.1986, acquitted the respondents accused of both the Sessions Cases from the charges for the offences punishable under sections 143, 147, 148, 149, 279, 307, 379 & 332 of IPC. Against the said common judgment, the State has preferred both these Criminal Appeals and the same, in the facts narrated above, are also finally heard together and are disposed of by this common judgment.

(3) It has been submitted by ld. Counsel Ms. Banna Datta appearing for ld. Counsel Mr. AR Shaikh for respondents accused that respondent No.1-accused of Criminal Appeal No.774/1986 namely Bhachu Meru Memon has died on 14.04.2000 pending the hearing and final

disposal of Criminal Appeal No.773/1986. She has also produced death certificate of accused No.Bachu Meru Memon. In view of above, the Criminal Appeal No.773/1986 stands abated so far as accused No.1 i.e. Bachu Meru Menon- respondent No.1 -accused of Criminal Appeal No.773/1986 is concerned and the same stands disposed of accordingly.

(4) Ld. APP Mr. KC Shah has taken this Court through the grounds of challenge mentioned in para-6 of the memo of the criminal appeal and the relevant part of the impugned judgment dated 27.03.1986. It is the say of the ld. APP Mr. Shah that the ld. Sessions Judge ought to have held the accused guilty as they have been found involved in serious offences against the officials of the State of Gujarat and that too on duty. On the other hand, the say of ld. Counsel Ms. Banna Datta appearing for ld. Counsel Mr. AR Shaikh for the respondents accused is that the findings recorded by the trial Court are balanced based on correct appreciation of the oral evidence that was available on record and there is no element of either perversity or illegality in the findings recorded and, therefore, the accused can be said to

have been acquitted legally and there is no need for this Court to interfere with the said findings.

(5) To appreciate the rival contentions especially in the background of the challenge reflected in para-6, we would like to state the basic facts that were placed before the trial Court by the prosecution. It is the say of the prosecution that the respondents with other accused had assaulted the police party in connection with the offences registered on 13.05.1985 in the morning and as per the confidential report received at Nakhatrana police station to the effect that the respondent No.1 had cut the trees from the forest and was passing through Nakhatrana police station area and at that time the police party had kept watch near the guest house and at that time at about 7 O'clock, the respondents came near the guest house in the truck and at that time PSI Silajiya had given signal to the driver to stop the truck and the driver did not stop the truck but took the truck in reverse and dashed against the police officers who were keeping watch at the guest house. A complaint was lodged against the respondents and after due completion of investigation, the

respondent was charged with the offences referred to above.

(6) We have carefully gone through the judgment under challenge and the relevant part of the oral as well documentary evidence led during the course of trial. Mr. Shah, ld. APP has taken us through the panchanama relied upon by the prosecution as well as the deposition of the complainant and other witnesses who are the eye-witnesses to the incident and victim of the assault made by the accused persons. Considering the allegations made by the prosecution, the ld. Trial Judge has framed about 17 points for determination and all of them have been held in negative. For recording acquittal, the ld. Trial Judge has considered even the map of the place of alleged incident prepared by the Revenue Circle Inspector on 12.10.1985 (exh.14) as well as deposition of witnesses i.e. PW Umed Raghavji (exh.13). In para-17 of the deposition, ld. Trial Judge has specifically observed that number of material prosecution witnesses i.e. Ramsingh Veraji (exh.15), Damji Vishram (exh.16), Shambhulal Shamji

(exh.17), Jayantilal Lalji (exh.18), Ranchhodpuri Kuvarpuri (exh.19), Peraj Kaya (exh.37), Virji Nenshi (exh.38) and Kiritsingh Harubha (exh.42), have not supported the case of the prosecution. Out of these witnesses, though PW Jayantilal Lalji (exh.18) has not supported the case of the prosecution, he was not declared hostile formally. It is rightly observed that the evidence led by these witnesses who have turned hostile or not supported the case of the prosecution, are not able to carry the case of the prosecution any further. It is settled legal position that under certain contingencies the say of hostile witnesses also can be considered and they can be partially believed, but the ld. Trial Judge has rightly not recorded that finding. Panchanamas are not found reliable because the contents of the panchanamas have not been proved specifically by the witnesses who have been examined to prove the panchanamas dawn by the investigating agency including panch Bhikhubha Dansingh (exh.20) and Panch Jethalal Keshavji (exh.33). When it is the case of the prosecution that when PSI had received secret information that the offence of a particular nature

has been committed and stolen articles i.e. cut wood is being transported in a motor vehicle (truck) from the area “A” to area “B”, even than no cogent evidence has been led to show that how many trees were cut and who were the owners of the trees that were cut. Even the owner of the agricultural field who was present at the relevant point of time when panchanama was drawn, has not supported the case of the prosecution. In this background, the ld. Trial Judge has observed that it would be risky to rely on such a piece of evidence.

(7) One serious allegation against the accused placed by the prosecution is that because of rash and negligent driving and in furtherance of the commission of the offence, the police vehicle (jeep) was given a dash by the truck and the accused when they were in truck and were being chased by the police, they had fired at police vehicle from the fire-arm. But the evidence clearly suggests that neither the jeep nor the truck had any marks of violence or damage. When the say of the police is that by way of self-defence they had also fired

certain shots from fire arm at the truck, how motor vehicle like a truck would not receive any marks of bullets of police. No clear account of the bullets used in the entire operation of chasing the truck which was escaping in breach of call by the police to halt, was also given to the Court. The ld. Trial Judge has also considered that the theory is mainly based on hypothetical proposition in the conclusive para of the judgment and in the background of the reasons assigned by the ld. Trial Judge in paras-24, 25, 26 & 27 of the judgment. In our view, the findings are absolutely logical and legal; e.g. It emerges from record that the entire incident had occurred within a distance i.e. gap between two palaces viz. Firstly the place when the truck was warned and driver was directed to stop the truck and secondly the place where the truck was intercepted forcefully by chasing. Two persons who were in the cabin of the truck, according to the prosecution, were arrested from the spot. This arrest is not found proved legal because the panchas have not supported the case of the prosecution. So, the ld. Trial Judge has observed that normally two vehicles if are

moving fast, chasing would not take about 3 hours in completing the distance between the aforesaid two places more particularly when the that distance is of about 20 to 25 kms. The driver-Police Constable Lalubha Sabaraji in his cross-examination (para-7) has stated that at relevant point of time, he was driving his police jeep at the speed of 70 to 80 kms. Per hour and the truck was being driven at the speed of about 80 to 85 kms. per hour. In this background, the ld. Trial Judge has observed that the story unfolded by the police witnesses should not be relied upon. Ultimately, the case of the prosecution, in absence of other independent evidence, rests with the depositions of police witnesses and when the chain placed by these witnesses is not probable, it would not be possible to link the accused persons with crime.

(8) For short, in our opinion, there is no illegality or perversity in the findings recorded by the ld. Trial Judge.The reasons recorded by the learned Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of **Dwarkadas v. State of**

Haryana, reported in (2002) 1 SCC 204, has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of **Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above cited decision, there is no merit in the present Criminal Appeals and the same require to be dismissed.

(9) In the result, the Criminal Appeal No.773/1986 stands abated so far as respondent No.1-accused i.e. accused Bachu Meru Memon of Criminal Appeal No.773/1986 arising out of Sessions Case No.37/85 is concerned and the same stands disposed of accordingly. Criminal Appeal No.773/1986 preferred by the State of Gujarat against respondent Nos.2 to 3 of

Sessions Case No.37/85 as well as Criminal Appeal No.774/1986 challenging the common judgment and order of acquittal dated 27.03.1986 recorded by the ld. Sessions Judge, Kutch at Bhuj in Sessions Case Nos. 60/1985 so far as respondent-accused is concerned, are hereby dismissed and impugned judgment and order of acquittal is hereby confirmed. It is further observed that that if need be, appropriate orders as to disposal of muddamal may be passed by the ld. Magistrate after obtaining appropriate directions from the Court of Sessions.

[C.K. BUCH, J]

[SHARAD.D.DAVE, J]

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